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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,271	12/15/2003	Eric Bryan Bond	9141M	3834

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/736,271	Applicant(s) BOND ET AL.	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The amendment dated 1/13/2006 has been fully considered and entered into the Record. The previously applied prior art rejections have been withdrawn due to amendment. Claim 20 is canceled. Claims 1-19 remain active.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites a fiber diameter range that is broader than that of independent claim 1. Therefore, claim 4 conflicts with the claim from which it depends.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites a monocomponent polymeric fiber comprising cotton and wood pulp, which are not polymeric substances.

Claim Objections

4. Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

5. Claim 1 is objected to as it recites “momocomponent” rather than “monocomponent”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 4, 5, 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Travelute, III et al. (US 2004/0077246) hereafter recited as “Travelute”.

Travelute teaches a hollow polyester filament wherein said filament may have a circular or non-circular hollow portion and a circular or non-circular cross-section (Abstract and claims 12 and 13). The filament is preferably made of polyethylene terephthalate (PET) with a denier between 1 and 45 [0074]. Using a density of 1.3 g/cc for PET the diameter of the PET fibers ranges from 10 to 70 micrometers. The invention of Travelute may be made into a nonwoven fabric for use as a wiper, fabric sheets, bed sheets or absorbent articles [0033].

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 11, 12, 13, 15 and 18 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Travelute, III et al. (US 2004/0077246).

Although Travelute does not explicitly teach the claimed feature of a greater opacity than a fibrous fabric produced with the same polymeric material at an equivalent fiber

diameter and basis weight, it is reasonable to presume that said property is inherent to Travelute. Support for said presumption is found in the use of like materials (i.e. a batt comprising hollow polyester filaments with wherein the perimeter of the hollow region of the hollow polyester filaments may be non-circular). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of greater opacity than a fibrous fabric produced with the same polymeric material at an equivalent fiber diameter and basis weight would obviously have been present one the Johnson et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Travelute et al. (US 2004/0077246) as applied to claim 1 above, and further in view of Tolliver (US 3,772,137).

The invention of Travelute et al. is silent as to hollow region percentage of the PET fibers.

a. Tolliver teaches a batt comprising hollow polyester filaments with wherein the perimeter of the hollow region of the hollow polyester filaments may be non-circular (Abstract and Figs. 2 and 4). The perimeter of the hollow region is substantially non-concentric to the outer perimeter of the hollow polymeric fiber (Figs. 2 and 4). The hollow region of the hollow polymeric fiber is from about 13 to about 25 percent (col. 2, lines 34-36). The fibers of the applied invention have a denier as low as 4 (col. 1, lines 64-67). Based the density of polyester provided supra and the polyester consisting 87% of the surface area of the end of the fiber (13% void content) the polyester fibers have a

diameter of ~22 microns (calculations done by Examiner). The filaments may be made with TiO₂ as a delustrant (col. 6, lines 25-30). The applied article is not explicitly directed to a wet wipe, however as the article meets the compositional and structural limitations set forth in claim 1 the article may in turn be used as a wet wipe.

b. Since Tolliver and Travelute et al. and Tolliver are from the same field of endeavor (i.e. hollow fiber polyester fabrics), the purpose disclosed by Tolliver would have been recognized in the pertinent art of Travelute.

c. It would have been obvious at the time the invention was made to one of ordinary skill in the art to have made the hollow filaments of Travelute et al. with the hollow region percentage of Tolliver. The skilled artisan would have been motivated by the desire to make a bed sheet having higher bulk under load (Abstract, Tolliver).

9. Claims 6-10, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Travelute et al. (US 2004/0077246) as applied to claim 1 above, and further in view of Johnson et al. (US 2003/0228813). The disclosure of Travelute is silent as to the use of non-thermoplastic hollow fiber fabrics, the addition of particulates, and the wet opacity of the fabric.

a. Johnson et al. teach a wiping article comprising a nonwoven substrate and a texture layer (Abstract). The nonwoven substrate may comprise synthetic fiber and natural fibers such as pulp fibers. The synthetic fibers may comprise eccentric sheath-core orientation and hollow fibers of the same configuration [0018]. Micron-sized fibers may be used in the most preferred article as the polyester fibers have a diameter of 12.4 microns and a rayon fiber diameter of 11.9 microns based upon specific gravities of 1.38 and 1.51, respectively [0019, Dictionary of Fiber and Textile Technology]. Example 6

comprises Calcium carbonate. Color agents may also be included for aesthetic purposes [0024]. Example 1 provides for polyester and rayon hollow fibers. The applied invention provided for both thermoplastic and non-thermoplastic fibers with eccentric hollow cores.

b. Since Travelute and Johnson et al. are from the same field of endeavor (i.e. absorbent polyester fabrics), the purpose disclosed by Johnson et al. would have been recognized in the pertinent art of Travelute.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the article of Travelute with some hollow fibers out of rayon along with colorant. The skilled artisan would have been motivated by the desire to create an absorbent article with enhanced aesthetics [0024] and to create a relatively soft substrate [0020].

d. Although Johnson et al. do not explicitly teach the claimed feature of having a wet opacity greater than a wet wipe comprising the same polymeric material at an equivalent fiber diameter and basis weight, it is reasonable to presume that said property is inherent to Johnson et al. Support for said presumption is found in the use of like materials (i.e. hollow rayon fibers of common diameter and configuration). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of having a wet opacity greater than a wet wipe comprising the same polymeric material at an equivalent fiber diameter and basis weight would obviously have been present once the Johnson et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above

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under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner*, et al. (CCPA) 186 USPQ 80.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

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